DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, submits this reply to the comments on and oppositions to its petition for reconsideration ("*CompTel Petition*") regarding the FCC's *First Report and Order* ("*First Report*") (FCC 97-158) released in the above-captioned proceedings on May 16, 1997.

I. THE MULTILINE PICC SHOULD BE ELIMINATED

The record developed in response to the petitions submitted by CompTel and others contained strong support for reconsideration of the FCC's adoption of the presubscribed interexchange carrier charge ("PICC") for multiline business subscribers. CompTel demonstrated in its petition that the multiline business PICC is not necessary to ensure that the local loop costs of multiline business customers are fully recovered. Rather, the multiline PICC was established solely as a subsidy mechanism to avoid raising the subscriber line charge ("SLC") for residential and single line business subscribers. Unfortunately, when creating this subsidy, the Commission failed to account for the immediate and substantial negative impact on low-volume small business customers and the competitiveness of carriers

who focus on serving them. That the subsidy is intended to be transitional does not help those carriers who are forced to exit the market in the short run. CompTel demonstrated that the multiline business PICC should be eliminated altogether.

There is broad support for eliminating the multiline business PICC or, at a minimum, resetting the charge to the level assessed on residential and single-line business subscribers.[1] A number of carriers, including several major incumbent local exchange carriers ("ILECs"), agree that the multiline business PICC is a subsidy.[2] BellSouth, for example, notes that, "through the higher PICCs that will be assessed on multiline business lines, [multiline] users will have to shoulder a disproportionate share of the implicit subsidy reflected in the PICC." (Comments of BellSouth at 4) GTE expressly agrees with CompTel that the multiline PICC "is inefficient and will harm low-volume multiline business customers," and urges the elimination of the PICC. (Comments of GTE at 17)

None of the comments that opposed eliminating this PICC, or at least the rate structure that imposed higher PICCs on multiline business customers, directly challenged CompTel's arguments. Certainly, no opposing party poked a hole in the convincing demonstrations of Call America, YTE, the County of Los Angeles, and others regarding the quantitative impact on affected users' interstate rates that the multiline PICC would cause.

---

[1] *See* Comments of Ameritech at 3 (opposes non-uniform PICCs); Comments of BellSouth at 4-5 (single PICC level for all lines); Comments of GTE at 17-18 (PICC should be eliminated); Comments of USTA at 2 (PICC should be the same for all lines); Comments of TRA at ii (reduce multiline PICC to residential level); Comments of the American Petroleum Institute at 7-8 (eliminate or reduce the multiline PICC); Comments of the Ad Hoc Telecommunications Users Committee at 7-9 (set residential and single-line business PICC at the level of the multiline PICC). *See also* Comments of CompTel at 3-7 (discussing five additional petitions that seek reconsideration of the PICC charge).

[2] *See, e.g.*, Comments of BellSouth at 4; Comments of USTA at 2; Comments of Bell Atlantic at 10.

Further, no opposing parties offered any rebuttal to the data produced by CompTel and other petitioners that the smaller carriers who focus upon serving low-volume business customers will not be able to ride out the transition period during which the multiline business PICC is expected to be reduced. Rather, opponents of the petitions for reconsideration of the multiline PICC blatantly sought their own gain, with little concern for the impact on consumers or competition.

U S WEST, for example, supported retaining the multiline business PICC because of U S West's concern that these costs will be recovered through increased SLCs. (*See* Comments of U S WEST at 14-15) While U S WEST acknowledges that the multiline PICC is a "subsidizing element," it cannot offer any rationale for its retention except that recovery directly from end users through the SLC could allow new competitors to create a stiffer challenge to U S WEST for local exchange service customers. *Id.* CompTel submits that concerns about potential competitive challenges to large ILECs like U S WEST cannot take preference over the adverse impact on multiline business customers and carriers that have built up their businesses serving them. This is especially the case when other large ILECs that are equally "threatened" by new competitors are arguing for elimination or substantial reduction of the PICC. Indeed, to the extent that removing the multiline business PICC will facilitate local competition, that is another reason to grant CompTel's petition.

AT&T also opposes the *CompTel Petition*, arguing for retention of the new PICC structure despite its acknowledgement that the multiline business PICC is "excessively high." (Comments of AT&T at 11) Moreover, AT&T cynically does not shy away from the fact that the current multiline PICC will have an adverse impact on its competitors that principally serve low-volume business customers. *Id.* at 11-12. AT&T's statements that the effect of the "excessively high" multiline PICC will only be temporary conveniently overlook

the fact that the impact on the small carriers that primarily serve low-volume multiline business customers will be immediate and, for many of these carriers, irreparably catastrophic. In short, the current multiline PICC may put a number of carriers out of business before the "transition" is completed for reasons that have nothing to do with their efficiency in serving their customers and everything to do with their inability to shoulder this new subsidy mechanism.

AT&T also urges denial of CompTel's petition on the belief that the PICC, as a flat-rated charge, is preferred over the usage-based common carrier line charge. *See, id.* at 12. This ignores the fact that the solution of those who support elimination of the PICC is *not* to retain the CCLC but to redirect the recovery of the subsidy revenues to be generated by the multiline PICC to a competitively neutral mechanism. Moreover, AT&T provides no support for its belief that recovering non-traffic sensitive costs through flat charges on parties who did not cause those costs to be incurred is the most efficient recovery mechanism.

Accordingly, the multiline business PICC should be eliminated *at any level* because it is a new, unlawful implicit subsidy mechanism. If the PICC is nonetheless retained, the multiline business PICC should be assessed at the same levels as for residential and single business line customers at levels far closer to the initial PICCs for these other lines. At a minimum, if the Commission does not change the initial level of the multiline business PICC, it should defer implementation of the PICC charges until one year after the definitional and implementation problems identified by Bell Atlantic, Sprint, USTA and others are resolved.[3]

[3]*See, e.g.*, Comments of Bell Atlantic at 18-19; Comments of MCI at 6-8.

II. IMPACT OF THE COMMISSION'S MODIFICATIONS TO TANDEM SWITCHED TRANSPORT

The *CompTel Petition* demonstrated that the FCC's modifications to the tandem-switched transport rules will increase the costs of long distance carriers serving rural markets in a prohibitive fashion, putting upward pressure on the rates for rural subscribers and reducing the carrier choices available to those subscribers as carriers are forced to leave the market. *CompTel Petition* at 6-9. CompTel demonstrated that the impact is the result of three factors: (1) an increase in the tandem switching charge of approximately 400 percent; (2) the elimination of the unitary rate structure; and (3) the replacement of the 9000 minutes-of-use loading factor with actual minutes for common transport charges.

A number of carriers and other commenters agreed with CompTel that these rule changes would have a significant adverse impact upon on competitive choices and affordable service for rural subscribers.[4] For the reasons given below, each of the FCC's transport rule changes should be reconsidered. Further, the Competitive Policy Institute noted that these changes (and the decision on the multiline business PICC) *taken together* provide an especially compelling basis for reconsideration. Comments of CPI at 2-4.

A. The Tandem Switching Charge

In its *Petition*, CompTel offered data comparing the Bell Companies' current tandem switching rates, the rates CompTel estimates under the FCC's new rules, and the Bell Companies' rates for tandem switching as an unbundled network element. These data

---

[4]*See, e.g.*, Comments of TRA at 6-14 (support of unitary rate structure and current tandem switching rate levels); Comments of MCI at 8-12 (tandem switching charge inflated unreasonably by the *First Report*; support of unitary rate structure); Comments of Sprint at 4 (supports use of 9000 minute of use per trunk as basis for tandem switched transport); Comments of WorldCom at 2 (*First Report* set tandem rates at discriminatory levels that will harm rural markets and customers).

demonstrate that current rates are roughly comparable to those derived from a costing methodology (TELRIC or TSLRIC) intended to approximate the outcome of efficient competitive forces. *Id.* at 8-9 & Attachment Two. The FCC stated in the *First Report* that competition should drive rates closer to cost. In the face of data demonstrating that current tandem switching rates already approximate that efficient outcome, the FCC should retain them.[5] Even apart from the discriminatory impact of the enormous increase in tandem switching charges ordered in the *First Report*, it is indefensible to load fully distributed costs (currently recovered through the transport interconnection charge) on tandem switching charges that already approximate the competitive outcome and to hope that the market will bring that rate level down to current levels over some indefinite period. It makes far more policy sense for the Commission to rely on the market to make minor corrections to a good estimate of what is already an efficient, competitive outcome.[6] The advantage of this approach is that it avoids unnecessary market distortions, with their consequential adverse impact on interexchange competition and rural consumers, during the hoped-for market-driven transition to more cost-causative interstate access rates.

Significantly, no commenter seriously challenged CompTel's data demonstrating that the FCC's rules will cause a 400 percent increase in tandem switching rates. TCG, while critical of CompTel's calculations, merely asserts that "there is no basis to assume that rate increases of this size will occur." Comments of TCG at 6. However, neither TCG nor any

---

[5]This is especially the case where tandem switching charges alone, among all transport rate elements, are being asked to bear fully distributed costs rather than economic costs and a subset of carriers, small long distance carriers serving principally rural markets (and their customers), will endure a disproportionately negative impact.

[6]This is particularly true at present when there are few competitive alternatives for tandem switching, and such alternatives, if and when they become available, will be limited geographically.

other party offers an alternative calculation or any other data to suggest the increase, and the impact, will not be substantial.[7]

Similarly, no opponent of the *CompTel Petition* countered CompTel's calculation of the new cross-over points -- if the increased tandem switching charges go into effect -- at which long distance carriers will minimize transport costs by shifting from tandem switched transport to dedicated facilities. *See CompTel Petition* at 10-11, Attachment Three. As CompTel demonstrated, these artificially low cross-over points will skew facilities investment decisions and affect negatively the efficiency of the network.

Finally, no party seriously contended that the *First Report*, by imposing overhead loadings for tandem switching based upon fully distributed costs, while continuing to permit dedicated transport to be priced roughly at forward-looking economic cost levels, complies with the D.C. Circuit's decision in *CompTel v. FCC* on remand.[8] Rather, some parties parroted the *First Report*'s discussion of the offered rationale for setting tandem loadings at roughly the same levels as local switching. *E.g.*, Comments of AT&T at 9-10. As CompTel showed in its petition, the *First Report* failed to address the impact of discriminatory loadings on the rates paid by rural subscribers and upon interexchange competition, and offered no justification for the discrimination. Similarly, by "equalizing" the overhead loadings for tandem switching and local switching, the FCC ignored that the

---

[7]TCG speciously argues that, under the FCC's decision, larger IXCs which use tandem switched transport to handle overflow traffic can be expected to pay "a larger proportion of the cost of the tandem, relative to their usage, than is the case today." Comments of TCG at 6-7 & n.15. However, TCG evades the real point, which is that, relative to all transport minutes, the increased tandem switching charges will ensure that carriers relying principally upon tandem switching will experience much more of a rate hike than extensive users of direct trunked transport.

[8]*See* Comments of MCI at 8-11 (detailing failure of Commission to comply with *CompTel v. FCC* on remand).

local switching charge is assessed upon all switched interstate traffic, whereas the tandem switching charge is assessed only upon tandem-switched traffic. Accordingly, the treatment of overhead loadings inefficiently penalizes the carriers that rely principally upon tandem switched transport *vis-a-vis* large carriers that proportionately use more dedicated transport. Tandem switching overhead loadings should be brought down to levels already enjoyed by users of dedicated transport rate elements.

B. The Unitary Rate Structure

A number of carriers join CompTel in calling for retention of the unitary rate structure. Indeed, even GTE calls for the flexibility to continue offering tandem switched transport under the unitary structure. (Comments of GTE at 6) However, others, such as AT&T, which formerly supported the unitary plan (*see CompTel Petition* at 17), now oppose it, presumably because of the competitive advantage the three-part plan bestows upon them. (Certainly AT&T -- which fails to acknowledge its former support -- does not deny that it will be advantaged.) AT&T contends that tandem-switched transport users, unlike dedicated transport customers, require the LECs to route traffic through the tandem as well as establish separate common and dedicated transport links. (Comments of AT&T at 4-5) However, dedicated transport comprises two or more separate links just as much as tandem-switched transport. Dedicated transport typically is routed through the central office housing the tandem switch, where the dedicated trunks are multiplexed, cross-connected, or both.[9] Yet,

[9]The FCC concedes that traffic routed over the same facilities for both tandem switched transport and DTT. *See CompTel Petition* at 18 n.14. As a result of this routing through the tandem office and the very real physical existence of these two separate links, pricing dedicated transport as an end-to-end service based on airline mileage is equitable only if charges for tandem-switched transport continues to be an end-to-end service based on airline mileage.

the Commission retained the unitary structure for dedicated transport. It should do the same for tandem-switched transport.

AT&T also contends that long distance carriers who rely exclusively or primarily upon tandem-switched transport can reconfigure their networks to minimize their costs under the three-part structure. (Comments of AT&T at 6) However, AT&T implicitly repudiates its own comment by noting that it should be able to use a unitary pricing option for dedicated transport because it has made a number of transport investment decisions based upon the current rate structure for dedicated transport. That argument is disingenuous, because CompTel's members and other smaller carriers have made transport investment decisions based upon the availability of unitary pricing for tandem-switched transport. It is unfair to deprive carriers that have relied principally upon a unitary rate structure in configuring their tandem-switched networks of the benefits of the rate structure underlying those decisions, while permitting larger carriers to continue enjoying the fruits of their investment decisions under a unitary pricing option for dedicated transport that is no more justified.

C. Common Transport Loading Factor

No one challenged CompTel's assertion that the loading factor is within the ILECs' control because they determine the utilization of the facilities, *i.e.*, whether to separate the traffic into different trunk groups or not, by interstate access, intraLATA toll, and local calls. Rather, the ILECs addressing the issue simply stated that actual minutes of use are below 9000 minutes of use per channel for interstate common transport. Yet it is the ILECs alone who have the ability to obtain a more efficient level of interstate access loading. If an ILEC chooses to pursue other objectives, interstate access users should not be penalized. Moreover, in addition to loading other traffic types onto common transport circuits, ILECs engineer these circuits to handle overflow from direct transport users during peak hour

situations, further depressing the "actual" loadings of common transport circuits. Because these arguments have not been challenged, the Commission should grant the *CompTel Petition* and continue to use 9000 minutes of use per channel as the common transport loading factor.

III. CONCLUSION

For the foregoing reasons and those set forth in the *CompTel Petition*, the Commission should reconsider its *First Report* and grant CompTel the relief it seeks.

Respectfully submitted,

THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

By: _____

Genevieve Morelli
Executive Vice President and
General Counsel
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

(202) 296-6650

Robert J. Aamoth
Edward A. Yorkgitis, Jr.
of
KELLEY DRYE & WARREN, LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

(202) 955-9600

September 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **Reply Comments of the Competitive Telecommunications Association** were served via first class mail, postage prepaid, this 3rd day of September, 1997, to the following:

William Caton*
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Thomas Boasberg*
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 819
Washington, DC 20544

James L. Casserly, Senior Legal*
Advisor to Commissioner Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

Kathy Franco*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Paul Gallant*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

James D. Schlichting, Chief*
Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

Jane Jackson, Deputy Chief*
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

A. Richard Metzger, Jr.*
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Richard Lerner*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

Richard A. Askoff
Perry S. Goldschein
National Exchange Carrier
Association, Inc.
100 South Jefferson Road
Whippany, New Jersey 07981

Harisha J. Bastiampillai, Esq.
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, VA 22102

James S. Blaszak
Laura F.H. McDonald
Levine, Blaszak, Block & Boothby, LLP
1300 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

Russell M. Blau
Tamar E. Haverty
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

David Cosson
L. Marie Guillory
NTCA
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Joe D. Edge
Richard J. Arsenault
Tina M. Pidgeon
Drinker Biddle & Reath
901 15th Street, N.W., Suite 900
Washington, D.C. 20005

Dana Frix
Tamar Haverty
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

Jack D. Kelley
KLP, Inc. d/b/a Call America
1201 South Alma School Road
Suite 2000
Mesa, AZ 85210

Leon M. Kestenbaum
Jay C. Keithly
H. Richard Junke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

J. Manning Lee
Vice President, Regulatory Affairs
Teleport Communications Group, Inc.
Two Teleport Drive
Staten Island, NY 10311

Andrew D. Lipman
Dana Frix
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404

Garrett G. Mayer
Chief, Regulatory Affairs
Internal Services Department
County of Los Angeles
9150 East Imperial Boulevard
Downey, CA 90242

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Kenneth F. Melley, Jr.
Vice President of Regulatory Affairs
U.S. Long Distance, Inc.
9311 San Pedro, Suite 100
San Antonio, TX 78216

Cynthia B. Miller
Senior Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Brian R. Moir
Moir & Hardman
2000 L Street, N.W.
Suite 512
Washington, D.C. 20036-4907

Peter A. Rohrbach
David L. Sieradzki
Steven F. Morris
Hogan & Hartson LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T Corp.
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Michael J. Shortley, III, Esq.
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

James U. Troup
Steven J. Hamrick
Arter & Hadden
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006-1301

Toby-Lynn Voss
Yavapai Telephone Exchange, Inc.
d/b/a YTE Communications
2001 West Camelback Road
Suite 450
Phoenix, AZ 85015

Lisa M. Zaina
Stuart E. Polikoff
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036

International Transcription Service
2100 M Street, N.W., Room 140
Washington, D.C. 20037

Susan Gately
Helen Golding
Joseph Laszlo
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108-2617

Wayne V. Black
C. Douglas Jarrett
Susan M. Hafeli
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, DC 20001

Michael S. Pabian
Larry A. Peck
Room 4H86
2000 West Ameritech Center Drive
Hoffman Estate, IL 60196-1025

Edward Shakin
Joseph DiBella
1320 North Court House Road, 8th Floor
Arlington, VA 22201

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-2610

Robert Glass
Glass Seigle & Liston
11 Vincent Street
Cambridge, MA 02140

Ronald Binz
Debra Berlyn
John Windhausen, Jr.
Competition Policy Institute
1156 15th Street, N.W, Suite 310
Washington, DC 20005

R. Michael Senkowski
Jeffrey S. Linder
Gregory J. Vogt
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Ward W. Wueste
Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, DC 20036

Kathy L. Shobert
Director, Federal Affairs
General Communication, Inc.
901 15th Street, N.W., Suite 900
Washington, DC 20005

Herbert E. Marks
James M. Fink
Squire Sanders & Dempsey LLP
1201 Pennsylvania Avenue, N.W.
P. O. Box 408
Washington, DC 20044

Kathryn Matayoshi
Charlew W. Totto
Division of Consumer Advocacy
Department of Commerce and
Consumer Affairs
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

Christopher Rozycki
Director of Regulatory Affairs
Hyperion Telecommunications, Inc.
DDI Plaza Two
500 Thomas Street, Suite 400
Bridgeville, PA 15017

Russell M. Blau
Kemal M. Hawa
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, DC 20007

Daniel S. Goldberg
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, DC 20036

Bradley Stillman
Don Sussman
Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Wendy S. Bluemling
Director - Regulatory Affairs
Southern New England Telephone Co.
227 Church Street
New Haven, CT 06510

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Thomas A. Pajda
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Brian Conboy
Thomas Jones
David R. Goodfriend
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20036

Robert B. McKenna
Jeffry A. Brueggeman
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

Patricia J. Goodson

*via hand delivery